

SECOND REGULAR SESSION

SENATE BILL NO. 811

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS BRAY, DOUGHERTY, DAYS, COLEMAN AND WILSON.

Read 1st time January 5, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4242S.011

AN ACT

To repeal sections 379.316, 383.150, and 538.225, RSMo, and to enact in lieu thereof twelve new sections relating to medical malpractice insurance, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 379.316, 383.150, and 538.225, RSMo, are repealed
2 and twelve new sections enacted in lieu thereof, to be known as sections 135.163,
3 379.316, 383.112, 383.150, 383.151, 383.200, 383.205, 383.210, 383.215, 383.220,
4 383.225, and 383.230, to read as follows:

135.163. 1. For all tax years beginning on or after January 1,
2 2007, in order to encourage the retention of physicians and other health
3 care providers in this state, an eligible taxpayer shall be allowed a
4 credit not to exceed fifteen thousand dollars per eligible taxpayer
5 against the tax otherwise due pursuant to chapter 143, RSMo, not
6 including sections 143.191 to 143.265, RSMo, in an amount equal to
7 fifteen percent of the increase in amount paid by an eligible taxpayer
8 for medical malpractice insurance premiums in the aggregate from one
9 policy period to the next immediate policy period. For purposes of this
10 section, the base policy period for calculation of the credit shall be the
11 medical malpractice insurance policy in effect on August 28, 2007.

12 2. The tax credit allowed by this section shall be claimed by the
13 taxpayer at the time such taxpayer files a return. Any amount of tax
14 credit which exceeds the tax due shall be carried over to any of the
15 next five subsequent taxable years, but shall not be refunded and shall

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 **not be transferable.**

17 **3. The director of the department of insurance and the director**
18 **of the department of revenue shall jointly administer the tax credit**
19 **authorized by this section. The director of the department of insurance**
20 **shall enact procedures to verify the amount of the allowable credit and**
21 **shall issue a certificate to each eligible taxpayer that certifies the**
22 **amount of the allowable credit. Both the director of the department of**
23 **insurance and the director of the department of revenue are authorized**
24 **to promulgate rules and regulations necessary to administer the**
25 **provisions of this section. Any rule or portion of a rule, as that term is**
26 **defined in section 536.010, RSMo, that is created under the authority**
27 **delegated in this section shall become effective only if it complies with**
28 **and is subject to all of the provisions of chapter 536, RSMo, and, if**
29 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo,**
30 **are nonseverable and if any of the powers vested with the general**
31 **assembly pursuant to chapter 536, RSMo, to review, to delay the**
32 **effective date or to disapprove and annul a rule are subsequently held**
33 **unconstitutional, then the grant of rulemaking authority and any rule**
34 **proposed or adopted after August 28, 2006, shall be invalid and void.**

35 **4. The tax credits issued pursuant to this section shall not exceed**
36 **a total for all tax credits issued of fifteen million dollars per fiscal year.**

379.316. 1. Section 379.017 and sections 379.316 to 379.361 apply to
2 insurance companies incorporated pursuant to sections 379.035 to 379.355,
3 section 379.080, sections 379.060 to 379.075, sections 379.085 to 379.095, sections
4 379.205 to 379.310, and to insurance companies of a similar type incorporated
5 pursuant to the laws of any other state of the United States, and alien insurers
6 licensed to do business in this state, which transact fire and allied lines, marine
7 and inland marine insurance, to any and all combinations of the foregoing or
8 parts thereof, and to the combination of fire insurance with other types of
9 insurance within one policy form at a single premium, on risks or operations in
10 this state, except:

11 (1) Reinsurance, other than joint reinsurance to the extent stated in
12 section 379.331;

13 (2) Insurance of vessels or craft, their cargoes, marine builders' risks,
14 marine protection and indemnity, or other risks commonly insured pursuant to
15 marine, as distinguished from inland marine, insurance policies;

16 (3) Insurance against loss or damage to aircraft;

17 (4) All forms of motor vehicle insurance; and
18 (5) All forms of life, accident and health, [and] workers' compensation
19 insurance, **and medical malpractice liability insurance.**

20 2. Inland marine insurance shall be deemed to include insurance now or
21 hereafter defined by statute, or by interpretation thereof, or if not so defined or
22 interpreted, by ruling of the director, or as established by general custom of the
23 business, as inland marine insurance.

24 3. Commercial property and commercial casualty insurance policies are
25 subject to rate and form filing requirements as provided in section 379.321.

**383.112. Any insurer or self-insured health care provider that
2 fails to timely report claims information as required by sections 383.100
3 to 383.125 shall be subject to the provisions of section 374.215, RSMo.**

383.150. As used in sections 383.150 to 383.195, the following terms shall
2 mean:

3 (1) "Association" [means], the joint underwriting association established
4 pursuant to the provisions of sections 383.150 to 383.195;

5 (2) **"Competitive bidding process", a process under which the
6 director seeks, and insurers may submit, rates at which insurers
7 guarantee to provide medical malpractice liability insurance to any
8 health care provider unable to obtain such insurance in the voluntary
9 market;**

10 (3) "Director" [means], the director of the department of insurance;

11 [(3)] (4) "Health care provider" includes physicians, dentists, clinical
12 psychologists, pharmacists, optometrists, podiatrists, registered nurses,
13 physicians' assistants, chiropractors, physical therapists, nurse anesthetists,
14 anesthetists, emergency medical technicians, hospitals, nursing homes and
15 extended care facilities; but shall not include any nursing service or nursing
16 facility conducted by and for those who rely upon treatment by spiritual means
17 alone in accordance with the creed or tenets of any well-recognized church or
18 religious denomination;

19 [(4)] (5) "Medical malpractice insurance" [means], insurance coverage
20 against the legal liability of the insured and against loss, damage, or expense
21 incident to a claim arising out of the death or injury of any person as a result of
22 the negligence or malpractice in rendering professional service by any health care
23 provider;

24 [(5)] (6) "Net direct premiums" [means], gross direct premiums written
25 on casualty insurance in the state of Missouri by companies authorized to write

26 casualty insurance under chapter 379, RSMo 1969, in the state of Missouri, less
27 return premiums thereon and dividends paid or credited to policyholders on such
28 direct business.

**383.151. When the department determines after a public hearing
2 that medical malpractice liability insurance is not reasonably available
3 for health care providers in the voluntary market, the director shall
4 establish a method for providing such insurance to such health care
5 providers. The director may:**

6 **(1) Establish a competitive bidding process under which insurers
7 may submit rates at which they agree to insure such health care
8 providers; or**

9 **(2) Establish any other method reasonably designed to provide
10 insurance to such health care providers.**

**383.200. 1. As used in sections 383.200 to 383.225, the following
2 terms mean:**

3 **(1) "Director", the same meaning as such term is defined in
4 section 383.100;**

5 **(2) "Health care provider", the same meaning as such term is
6 defined in section 383.100;**

7 **(3) "Insurer", an insurance company licensed in this state to
8 write liability insurance, as described in section 379.010, RSMo;**

9 **(4) "Medical malpractice insurance", the same meaning as such
10 term is defined in section 383.200.**

11 **2. The following standards and procedures shall apply to the
12 making and use of rates pertaining to all classes of medical malpractice
13 insurance:**

14 **(1) Rates shall not be excessive, inadequate, or unfairly
15 discriminatory. A rate is excessive if it is unreasonably high for the
16 insurance provided. A rate is inadequate if it is unreasonably low for
17 the insurance provided and continued use of it would endanger the
18 solvency of the company. A rate is unfairly discriminatory if it does
19 not reflect equitably differences in reasonably expected losses and
20 expenses;**

21 **(2) (a) Every insurer that desires to increase a rate by less than
22 fifteen percent shall file such rate, along with data supporting the rate
23 change as prescribed by the director, no later than thirty days after
24 such rate becomes effective. Filings under this paragraph shall not be**

25 subject to approval or disapproval by the director;

26 (b) Every insurer that desires to increase a rate by fifteen
27 percent or more shall submit a complete rate application to the
28 director. A complete rate application shall include all data supporting
29 the proposed rate and such other information as the director may
30 require. The applicant shall have the burden of proving that the
31 requested rate change is justified and meets the requirements of this
32 act;

33 (c) Every insurer that has filed a rate increase under paragraph
34 (a) of this subdivision for two consecutive years and in the third year
35 desires to file a rate increase which in the aggregate over the three-
36 year period will equal or exceed a total rate increase of forty percent
37 or more shall be required to submit a complete rate application under
38 paragraph (b) of this subdivision;

39 (d) Every insurer that has not filed or had a rate increase
40 approved for three consecutive years may file a rate increase in the
41 fourth year in an amount not to exceed a twenty-five percent increase
42 without being required to submit a complete rate application under
43 paragraph (b) of this subdivision;

44 (3) The director of insurance shall promulgate rules setting forth
45 standards that insurers shall adhere to in calculating their rates. Such
46 rules shall:

47 (a) Establish a range within which an expected rate of return
48 shall be presumed reasonable;

49 (b) Establish a range within which categories of expenses shall
50 be presumed reasonable;

51 (c) Establish a range for the number of years of experience an
52 insurer may consider in determining an appropriate loss development
53 factor;

54 (d) Establish a range for the number of years of experience an
55 insurer may consider in determining an appropriate trend factor;

56 (e) Establish a range for the number of years of experience an
57 insurer may consider in determining an appropriate increased limits
58 factor;

59 (f) Establish the proper weights to be given to different years of
60 experience;

61 (g) Establish the extent to which an insurer may apply its

62 subjective judgment in projecting past cost data into the future;

63 (h) Establish any other standard deemed reasonable and
64 appropriate by the director;

65 (4) The director shall require an insurer to submit with any rate
66 change application:

67 (a) A comparison, in a form prescribed by the director, between
68 the insurer's initial projected incurred losses and its ultimate incurred
69 losses for the eight most recent policy years for which such data is
70 available;

71 (b) A memorandum explaining the methodology the insurer has
72 used to reflect the total investment income it reasonably expects to
73 earn on all its assets during the period the proposed rate is to be in
74 effect. The director shall disapprove any rate application that does not
75 fully reflect all such income;

76 (5) The director shall notify the public of any application from
77 an insurer seeking a rate increase of fifteen percent or more, and shall
78 hold a hearing on such application within forty-five days of such
79 notice. The application shall be deemed approved ninety days after
80 such notice unless it is disapproved by the director after the hearing;

81 (6) If after a hearing the director finds any rate of an insurer to
82 be excessive, the director may order that the insurer discontinue the
83 use of the rate and that the insurer refund the excessive portion of the
84 rate to any policyholder who has paid such rate. The director shall not
85 be required to find that a reasonable degree of competition does not
86 exist to find a rate excessive.

87 3. For insurers required to file pursuant to paragraph (b) of
88 subdivision (2) of subsection 2 of this section, if there is insufficient
89 experience within the state of Missouri upon which a rate can be based
90 with respect to the classification to which such rate is applicable, the
91 director may approve a rate increase that considers experiences within
92 any other state or states which have a similar cost of claim and
93 frequency of claim experience as this state. If there is insufficient
94 experience within Missouri or any other states which have similar cost
95 of claim and frequency of claim experience as Missouri, nationwide
96 experience may be considered. The insurer in its rate increase filing
97 shall expressly show the rate experience it is using.

98 4. All information provided to the director under this section

99 shall be available for public inspection.

100 5. The remedies set forth in this chapter shall be in addition to
101 any other remedies available under statutory or common law.

102 6. Any rule or portion of a rule, as that term is defined in section
103 536.010, RSMo, that is created under the authority delegated in this
104 section shall become effective only if it complies with and is subject to
105 all of the provisions of chapter 536, RSMo, and, if applicable, section
106 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
107 and if any of the powers vested with the general assembly pursuant to
108 chapter 536, RSMo, to review, to delay the effective date, or to
109 disapprove and annul a rule are subsequently held unconstitutional,
110 then the grant of rulemaking authority and any rule proposed or
111 adopted after August 28, 2006, shall be invalid and void.

383.205. For all medical malpractice insurance policies written
2 for insureds in the state of Missouri, the ratio between the base rate of
3 the highest-rated specialty and the base rate of the lowest-rated
4 specialty shall be no more than a ratio of six-to-one.

383.210. In determining the premium paid by any health care
2 provider, a medical malpractice insurer shall apply a credit or debit
3 based on the provider's loss experience, or shall establish an
4 alternative method giving due consideration to the provider's loss
5 experience. The insurer shall include a schedule of all such credits and
6 debits, or a description of such alternative method in all filings it
7 makes with the director of insurance. No medical malpractice insurer
8 may use any rate or charge any premiums unless it has filed such
9 schedule or alternative method with the director of insurance and the
10 director has approved such schedule or alternative method. A debit
11 shall be based only on those claims that have been paid on behalf of the
12 provider.

383.215. On or before March first of each year, every insurer
2 providing medical malpractice insurance to a health care provider shall
3 file the following information with the director of insurance:

4 (1) Information on closed claims:

5 (a) The number of new claims reported during the preceding
6 calendar year, and the total amounts of reserve for such claims and for
7 allocated loss adjustment expenses in connection with such claims;

8 (b) The number of claims closed during the preceding year, and

9 the amount paid on such claims, detailed as follows:

10 a. The number of claims closed each year with payment, and the
11 amount paid on such claims and on allocated loss adjustment expenses
12 in connection with such claims;

13 b. The number of claims closed each year without payment, and
14 the amount of allocated loss adjustment expenses in connection with
15 such claims;

16 (2) Information regarding judgments, payment, and severity of
17 injury in connection with judgments. For each judgment rendered
18 against an insurer for more than one hundred thousand dollars:

19 (a) The amount of the judgment and the amount actually paid to
20 the plaintiff;

21 (b) The category of injury suffered by the plaintiff. Injuries shall
22 be categorized as follows:

23 Category 1: Temporary injury, emotional only

24 Category 2: Temporary insignificant injury, including
25 lacerations, contusions, minor scars, and rash

26 Category 3: Temporary minor injury, including infections,
27 missed fractures, and falls in hospitals

28 Category 4: Temporary major injury, including burns, left
29 surgical material, drug side effects, and temporary brain damage

30 Category 5: Permanent minor injury, including loss of fingers,
31 and loss or damage to organs

32 Category 6: Permanent significant injury, including deafness,
33 loss of limb, loss of eye, and loss of one kidney or lung

34 Category 7: Permanent major injury, including paraplegia,
35 blindness, loss of two limbs, and brain damage

36 Category 8: Permanent grave injury, including quadriplegia,
37 severe brain damage, and any injury requiring lifelong care or having
38 a fatal prognosis

39 Category 9: Death;

40 (3) Information on each rate change implemented during the
41 preceding five-year period by state and medical specialty;

42 (4) Information on premiums and losses by medical specialty:

43 (a) Written premiums and paid losses for the preceding year, and
44 earned premiums and incurred losses for the preceding year, with
45 specifics by medical specialty;

46 **(b) Number of providers insured in each medical specialty;**
47 **(5) Information on premiums and losses by experience of the**
48 **insured:**

49 **(a) Written premiums and paid losses for the preceding year, and**
50 **earned premiums and incurred losses for the preceding year, with**
51 **specifics as follows:**

52 **a. As to all insureds with no incidents within the preceding five-**
53 **year period;**

54 **b. As to all insureds with one incident within the preceding five-**
55 **year period;**

56 **c. As to all insureds with two incidents within the preceding five-**
57 **year period;**

58 **d. As to all insureds with three or more incidents within the**
59 **preceding five-year period;**

60 **(b) Number of providers insured:**

61 **a. With no incidents within the preceding five-year period;**

62 **b. With one incident within the preceding five-year period;**

63 **c. With two incidents within the preceding five-year period;**

64 **d. With three or more incidents within the preceding five-year**
65 **period;**

66 **(6) Information on the performance of the investments of the**
67 **insurer, including the value of the investments held in the portfolio of**
68 **the insurer as of December thirty-first of the preceding calendar year,**
69 **and the rate of return on such investments, detailed by category of**
70 **investment as follows:**

71 **(a) United States government bonds;**

72 **(b) Bonds exempt from federal taxation;**

73 **(c) Other unaffiliated bonds;**

74 **(d) Bonds of affiliates;**

75 **(e) Unaffiliated preferred stock;**

76 **(f) Preferred stock of affiliates;**

77 **(g) Unaffiliated common stock;**

78 **(h) Common stock of affiliates;**

79 **(i) Mortgage loans;**

80 **(j) Real estate;**

81 **(k) Any additional categories of investments specified by the**
82 **director of insurance.**

383.220. 1. On or before July 1, 2007, and after consultation with
2 the medical malpractice insurance industry, the director shall establish
3 an interactive Internet site which will enable any health care provider
4 licensed in this state to obtain a quote from each medical malpractice
5 insurer licensed to write the type of coverage sought by the provider.

6 2. The Internet site shall enable health care providers to
7 complete an online form that captures a comprehensive set of
8 information sufficient to generate a quote for each insurer. The
9 director shall develop transmission software components which allow
10 such information to be formatted for delivery to each medical
11 malpractice insurer based on the requirements of the computer system
12 of the insurer.

13 3. The director shall integrate the rating criteria of each insurer
14 into its online form after consultation with each insurer using one of
15 the following methods:

16 (1) Developing a customized interface with the insurer's own
17 rating engine;

18 (2) Accessing a third-party rating engine of the insurer's choice;

19 (3) Loading the insurer's rating information into a rating engine
20 operated by the director;

21 (4) Any other method agreed on between the director and the
22 insurer.

23 4. After a health care provider completes the online form, the
24 provider will be presented with quotes from each medical malpractice
25 insurer licensed to write the coverage requested by the provider.

26 5. Quotes provided on the Internet site shall at all times be
27 accurate. When an insurer changes its rates, such rate changes shall
28 be implemented at the Internet site by the director, in consultation
29 with the insurer, as soon as practicable but in no event later than ten
30 days after such changes take effect. During any period in which an
31 insurer has changed its rates but the director has not yet implemented
32 such changed rates on the Internet site, quotes for that insurer shall
33 not be obtainable at the Internet site.

34 6. The director shall design the Internet site to incorporate user-
35 friendly formats and self-help guideline materials, and shall develop a
36 user-friendly Internet user-interface.

37 7. The Internet site shall also provide contact information,

38 including address and telephone number, for each medical malpractice
39 insurer for which a provider obtains a quote at the Internet site.

40 8. By December 31, 2007, the director shall submit a report to the
41 general assembly on the development, implementation, and affects of
42 the Internet site established by this section. The report shall be based
43 on:

44 (1) The director's consultation with health care providers,
45 medical malpractice insurers, and other interested parties; and

46 (2) The director's analysis of other information available to the
47 director, including a description of the director's views concerning the
48 extent to which the information provided through the Internet site has
49 contributed to increasing the availability of medical malpractice
50 insurance and the effect the Internet site has had on the cost of medical
51 malpractice insurance.

383.225. Each insurer shall file with the director of insurance
2 new manuals of classifications, rules, underwriting rules, rates, rate
3 plans and modifications, policy forms and other forms to which such
4 rates are applied, that reflect the savings, if any, attributable to each
5 provision of this act.

383.230. Insurers writing medical malpractice insurance shall
2 provide insured health care providers with written notice of any
3 increase in renewal premium rates at least ninety days prior to the
4 date of the renewal. At a minimum, the notice shall be sent by first
5 class mail at least ninety days prior to the date of renewal and shall
6 contain the insured's name, the policy number for the coverage being
7 renewed, the total premium amount being charged for the current
8 policy term, and the total premium amount being charged to renew the
9 coverage.

Section B. Because immediate action is necessary to take action regarding
2 the circumstances facing the medical malpractice liability insurance market in
3 this state section A of this act is deemed necessary for the immediate
4 preservation of the public health, welfare, peace, and safety, and is hereby
5 declared to be an emergency act within the meaning of the constitution, and
6 section A of this act shall be in full force and effect upon its passage and
7 approval.

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